EVILS AND REMEDIES IN THE ADMINISTRATION OF THE CRIMINAL LAW

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None of the many difficult problems that confront the present generation is more urgent or perplexing than the reform of the administration of the criminal law in our country. Our wealth and importance in the financial world have increased by such leaps and bounds that we have completely outgrown the laws which were enacted to meet the earlier conditions in our history.

It will be no easy task to secure the changes that are necessary to meet and curb the cupidity of the criminal rich, nor to enforce those laws when enacted.

Strange to say the chief obstruction to the administration of justice in criminal cases lies in the undue shelter afforded by our Constitution.

The prescribed remedies against crimes of violence are, on the whole, fairly administered, though there are still many abuses capable of correction. It is in the attempts to punish the crimes born of greed and cunning in the financial world that the machinery of justice has broken down and the law is administered in a spasmodic and hysterical way.

I think it will be admitted by all fair-minded critics of our institutions that our people have not that respect for the law which pervades foreign countries. Is it not because the enforcement of the law with us is not entitled to the same respect? It is either not made to reach the powerful or has been found incapable of enforcement against them. This discrimination is not due to the dishonesty of our people or public officials, nor to their unwillingness to punish rich offenders. It is owing largely to the character of the proof necessary to establish the commission of a crime involving complicated financial transactions and to the difficulty of securing such proof, because of the impassable barriers thrown around the offender by what are known as the constitutional rights and immunities of a person charged with crime.

Even at the risk of being considered guilty of heresy I question the wisdom of these provisions, which are embodied in the Fourth and Fifth Amendments to the Federal Constitution and of like provisions in the Constitutions of the various States as they have been construed by the courts. In the few States, like New Jersey, which have no provisions in their Constitutions to the effect that in a criminal case no person shall be bound to incriminate himself the courts have held that the right is one inherited from the common law and have accordingly read the provision into the organic law of the State.

The language of the Fourth Amendment so far as applicable to this discussion is:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

That of the Fifth Amendment is that

"No person shall . . . be compelled in any criminal case to be a witness against himself."

It is hardly necessary to remind you of the history of the oppression that led to the enactment of these amendments, as described by Justice Bradley, in Boyd *vs.* United States, 116 U. S., 624-626:

"In order to ascertain the nature of the proceedings intended by the Fourth Amendment to the Constitution under the terms 'unreasonable searches and seizures,' it is only necessary to recall the contemporary or then recent history of the controversies on the subject, both in this country and in England. The practice had obtained in the colonies of issuing writs of assistance to the revenue officers, empowering them, in their discretion, to search suspected places for smuggled goods, which James Otis pronounced 'the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book;' since they placed 'the liberty of every man in the hands of every petty officer.' This was in February, 1761, in Boston, and the famous debate in which it occurred was perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country. 'Then and there,' said John Adams, 'then and there was the first scene of the first act of opposi-

tion to the arbitrary claims of Great Britain. Then and there the child Independence was born.'

"These things, and the events which took place in England immediately following the argument about writs of assistance in Boston, were fresh in the memories of those who achieved our independence and established our form of government. In the period from 1762, when the *North Briton* was started by John Wilkes, to April, 1766, when the House of Commons passed resolutions condemnatory of general warrants, whether for the seizure of persons or papers, occurred the bitter controversy between the English government and Wilkes, in which the latter appeared as the champion of popular rights, and was, indeed, the pioneer in the contest which resulted in the abolition of some grievous abuses which had gradually crept into the administration of public affairs. Prominent and principal among these was the practice of issuing general warrants by the Secretary of State, for searching private houses for the discovery and seizure of books and papers that might be used to convict their owner of the charge of libel. Certain numbers of the *North Briton,* particularly No. 45, had been very bold in denunciation of the government, and were esteemed heinously libellous. By authority of the secretary's warrant Wilkes's house was searched, and his papers were indiscriminately seized. For this outrage he sued the perpetrators and obtained a verdict of £1000 against Wood, one of the party who made the search, and £4000 against Lord Halifax, the Secretary of State, who issued the warrant.

"The case, however, which will always be celebrated as being the occasion of Lord Camden's memorable discussion of the subject, was that of Entick *vs.* Carrington and Three Other King's Messengers, reported at length in 19 Howell's State Trials, 1029. The action was trespass for entering the plaintiff's dwelling house in November, 1762, and breaking open his desks, boxes, etc., and searching and examining his papers. The jury rendered a special verdict, and the case was twice solemnly argued at the bar. Lord Camden pronounced the judgment of the court in Michaelmas Term, 1765, and the law as expounded by him has been regarded as settled from that time to this, and his great judgment on that occasion is considered as one of the landmarks of English liberty. It was welcomed and applauded by the lovers of liberty in the colonies as well as in the mother country. It is regarded as one of the per-

manent monuments of the British Constitution, and is quoted as such by the English authorities on that subject down to the present time."

Until the decision in 1885 in the Boyd case it was not generally supposed that the provision against unreasonable search and seizure applied to the enforced production of books and papers under subpœna for use in a criminal case, so as to permit a man who was able to secure possession of evidence of this character to thwart the ends of justice. It was, to say the least, a surprise to the legal profession to find that to require obedience to a lawful mandate for the production of such books, was a "search of seizure" and more surprising still to learn that it was an "unreasonable" seizure. But such is the law unless the recent decisions of the court can be said to have modified the rule in the Boyd case.

Yet it is not clear to me that the framers of our Constitution ever meant that the Fourth Amendment should be held to forbid the courts to use the written evidence of a criminal act against the person charged with the commission of the crime, where that evidence can be secured from him through the orderly process of subpœna.

In the last few years the Supreme Court has been face to face with the difficulty of proving crime where the defendant can be permitted to withhold his books and papers from the operation of a subpœna and has found it necessary to "distinguish" the Boyd case so as to mitigate, in so far as possible, the many difficulties to which it gave rise. That great court realizes the necessity, above all things, of certainty in the law and so it rarely overrules its own decisions. But it is a progressive court. Progress is more necesary than consistency, and so it has begun the process of "limiting" and "distinguishing" the Boyd case. The next stage will be to "forget" it. Let us hope so.

I need hardly say that I intend no disrespect to that greatest of the world's judicial tribunals. We should be forever thankful for its vast powers and especially for the power of judicial legislation which it has taken unto itself. The nation owes much of its greatness to the brave exercise of that power at critical times.

As evidence of the departure from the Boyd case permit me to call your attention to Hale *vs.* Henkel, 201 U. S., where the secretary of the American Tobacco Company was subpœnaed to pro-

duce the books of the company which was under investigation for violating the anti-trust law. A person testifying against himself is entitled to immunity under that statute. The Supreme Court held that the secretary could not plead the privilege of the corporation against incriminating itself. Some of the judges were in favor of holding that a corporation was not a person, within the protection of the Constitution so as to get rid of the prohibition once and for all so far as concerned corporations, although that court had previously repeatedly held that under the Fourteenth Amendment a corporation was a person, entitled to the equal protection of the laws with an individual, and some members of the court had said that a corporation was equally within the meaning of the Fourth and Fifth Amendments.

In the case of Al Adams, charged with owning and operating policy shops, the Supreme Court affirmed the action of the lower court in allowing his books to be used against him, although the particular evidence complained of had been forcibly and unlawfully seized, thus literally violating the protection that was clearly intended to be afforded by the Fourth Amendment. The Court held that the violation of the defendant's rights presented no federal question and that in any event it made no difference how the evidence had been secured, so long as it had been made available. So that whilst a man could not be compelled to produce his books in answer to a subpœna in a criminal case against him, they could be forcibly taken from him or stolen from him, and used as evidence.

In the Twining case the court decided that although a defendant on trial for larceny had been compelled to incriminate himself, no federal right had been violated and no federal question was involved, and that it was for the State Court to determine whether its law had been thus violated in that respect.

Within the past few days the U. S. Circuit Court in New York decided in the case of U. S. *vs.* American Sugar Company that the corporation could be forced to produce its books without granting immunity to any one.

These cases are cited as illustrating the lengths to which the court has been driven in order to preserve even a vestige of its machinery to detect and punish crime, with these constitutional provisions in its way.

I submit, but with hesitation—not because of doubt as to the wisdom of the suggestion, but because it will appear like sacrilege to the uncompromising worshippers of our Constitution—that the first and greatest existing evil in the administration of the criminal law, and one that should be corrected, is the undue protection still afforded to persons charged with crime by these provisions of the Constitution and like provisions in the State Constitutions.

We may somewhat mitigate the evil by bold judicial legislation. That is the process we are now undergoing with respect to corporations. But the prosecution of corporations, which can result only in a fine is a farce—we cannot strike at the root of the trouble without amending our Constitution.

But for the fear of being charged with treason against this fetich which all lawyers are expected to worship, I should be tempted to say that the difficulty put in the way of the punishment of crime is not the only disability under which that great Document of Compromises has placed us. When we consider how helpless we are under it to regulate divorce, or to tax wealth (through an income tax), instead of taxing poverty or to secure uniform corporation laws or to prevent the States from bidding against one another for "business" in the laxity of administering divorce and corporation laws, perhaps we may be pardoned for suggesting that great as was the wisdom of our fathers, they did not foresee all the possibilities of the future.

The occasion that gave rise to these clauses in the Fourth and Fifth Amendments can never again arise. These disabilities to punish crime do not pertain in other countries; they are no protection to the innocent, but they are the cause of miscarriage of justice and the escape of the guilty in nine cases out of ten. They lead to all sorts of dishonest expedients by the prosecuting officers and bring the administration of justice into contempt. No device, however unlawful, by which a man's papers can be seized or stolen from him will prevent their use against him, and yet, he himself cannot be forced to produce them. We have sacrificed the substance of the bill of rights and are clinging to the shadow.

It must not be forgotten that the rule that a defendant in a criminal case cannot be compelled to incriminate himself was enacted at a time when the defendant was not allowed to be a witness in his own behalf.

I would not only remove the existing restrictions, but would go further and permit the defendant to be called by the prosecutor for cross-examination, but only in open court and at a time when he is represented by counsel. Subject to the limitation that the presiding judge should not put questions or turn prosecutor, which is the vice of the continental system, I would adopt that system, with the further qualification that there should be no private or "star-chamber" interrogation of the defendant. Nine out of ten crimes go unpunished because of this tradition, which found its birth in the abuses of the Dark Ages.

We have the most striking illustration of the vice of this rule in the pending prosecutions for violation of the anti-trust law. The most flagrant of these violators are practically immune because they cannot be forced to disclose the "gentlemen's agreements" and other forms of unlawful combinations, as the result of which every human soul in the country is daily paying tribute to them. We have the sad spectacle of the courts of the country passing solemn judgments in civil suits enjoining and dissolving these monopolies as the enemies of commerce and decreeing that the leaders and owners of these vast industries are guilty of criminal violation of the law and yet we find the government powerless to enforce the criminal laws against the individuals who gave them birth, who conduct them and are the beneficiaries of their criminal existence. Such exhibitions, repeated day by day, are bound to educate the people to a contempt for the law and to a feeling that it discriminates between the weak and the powerful.

How long could these gigantic pools last, many of which are evidenced by the written admissions of the parties if the culprits could be put upon the witness stand and forced to testify and produce the written evidence of their crimes? If they are innocent, can anybody conceive how they could be harmed?

There are a half-dozen offices in the city of New York of men engaged in the business of acting as so-called "commissioners" of these criminal pools and as expert accountants under whose direction the profits are distributed, that could be made to yield up the written evidence of a hundred or more of these vast conspiracies involving thousands of influential business men who are supposed to be reputable, law-abiding citizens, but who do not scruple to commit this form of crime. The only thing that protects them from the en-

forcement of the law is the construction that has been placed upon these constitutional limitations.

If trusts and monopolies are good things for the country, and the laws that have been enacted to suppress them are mere demagogic class legislation born of the envy of the poor against the rich, as some of our plausible friends in and around Wall Street, living in a "Fool's Paradise," still seem to think, they should be wiped from the statute books. If, on the other hand, these trusts are an economic curse to the country, are destroying opportunity for the rising generation, paralyzing the economic laws of supply and demand, and levying tribute upon us by sheer brute force, more cruel and ruthless than the forced tribute exacted by the robber barons of old, we shall never be able to rid ourselves of this blight so long as there is such a thing as human greed, without the stern application of the criminal law to the men who guide and control them.

For that purpose the entire inquisitorial machinery of justice should be available. Every barrier that has been thrown in the way should be removed, unless it is seen to be necessary for the protection of the innocent against oppression.

The provisions quoted from the Fourth and Fifth Amendments of the Constitution (not the entire amendments), and like provisions in the State Constitutions, constitute to-day the great and only barrier between the people and the execution of their will against these violators of the law.

The second great evil in the administration of the criminal law, and, for that matter, of all laws in our country, is the prevalence of perjury due to the non-enforcement of the laws enacted for its punishment. I think it will be generally admitted that in no civilized country is wilful false swearing so prevalent as here—due largely to the fact that the penalty imposed under the laws of the various states is too severe, and that it is, therefore, a crime rarely punished.

In the State of New York, perjury and subornation of perjury in a criminal case are each punishable by a maximum term of twenty years' imprisonment, and in a civil case by a maximum term of ten years.

It has been said, and I think rightly that the crime of perjury is committed in at least three out of every five cases tried in the courts in which an issue of fact is involved. It has become so

general that the courts regard it almost as a part of the inevitable accompaniment of a trial.

Again, contrasting our conditions in this respect with those prevailing in foreign countries, no fair-minded observer of the administration of justice in those countries will deny that in neither England, Germany nor France is there committed a fraction of the perjury that is prevalent in our courts. In none of those countries is perjury punishable with the severity provided by our law, which renders conviction well-nigh impossible.

The German courts are exceptionally free from this pollution of the judicial system. Most cases in which there is a sharply defined issue of fact that cannot be explained as the result of mistake or honest difference of recollection, are followed by prosecution. The dread of the law is upon every man who goes upon the witness stand there.

Permit me to suggest at least a partial remedy for this ever-increasing danger.

It should be made *obligatory* upon the court on the trial of every issue of fact before a jury to require the jury, in addition to its general verdict, to answer the question as to whether any party or witness has been guilty of wilful false swearing, and if so, to name the party or parties or witnesses so guilty. Where the trial takes place before the court without a jury, the court should be required to answer such a question. If the court or jury (as the case may be) finds that there has been perjury, it should be incumbent upon the prosecuting officer to act upon such finding.

The knowledge of the parties and their witnesses that the jury will be required to answer such a question will in itself be a most powerful deterrent against reckless false-swearing. Unfortunately there are many in the community who have more regard for their reputations than for the sanctity of their oaths and a far greater regard for their liberty than for either.

If the submission of the question be left to the discretion of the court, or its answer be made discretionary with the jury, nothing will be accomplished. It should be mandatory, and a like mandate should apply to the prosecuting officer to place the evidence of perjury in every such case before the grand jury.

The third evil to which I desire to refer is the unbridled license of the press in commenting upon and often trying cases in the

public prints. This is a prolific source of the miscarriage of justice and is most prejudicial to the rights of defendants charged with crime. Its effect upon the administration of justice is baneful and far-reaching:

(*a*) It creates a sentiment in the community as to the guilt or innocence of the accused, which makes it well-nigh impossible to secure an impartial jury. It may be that jurors can dismiss their preconceived impressions from their minds and be guided solely by the evidence, but that is not the experience of most men. Even if that were true, why should we tolerate a practice that has in it such elements of danger? Strangers to us who do not realize the difficulties under which we labor from the prejudging of cases through the license of the press, have made this part of our judicial system the subject of ridicule, and not without reason. Imagine weeks of time being consumed in securing twelve men whose minds have not been so poisoned by newspaper stories concerning a case in the courts that they are unable impartially to weigh the evidence! It should be impossible to find anything in a newspaper except what transpires in the courtroom until after the conclusion of the trial. Consider also the expense to the state and the additional cost to the accused of these protracted trials brought about by this pernicious practice. In the face of public clamor, which means the goading of the press against the accused, frequently for sensational purposes, justice is rarely done.

If it be said that the courts frequently need that spur to prevent undue influence by powerful criminals, the answer is that it is an illegitimate and dangerous expedient as an aid to justice.

(*b*) The atmosphere and sentiment thus created around a case are bound to, and do affect not only the jury, but the court as well. A man does not lose his ambitions or human nature by climbing from the bar onto the bench. Most of our public men are known to us only as they are pictured by the newspapers, which make and unmake men It is well-nigh impossible to exclude entirely the subconscious influence of press comments on the judge as reflecting the views of the community in which he lives, be he ever so upright. He would rather go with the tide than against it, and he, too, is not infrequently already impregnated with the atmosphere of the community gathered from the press.

(*c*) The prosecutor, who should be impartial, seeking only the

truth and not bent upon conviction unless the facts satisfy him beyond a reasonable doubt, is put to a test that few men in public office are able to resist.

Imagine such a prosecutor, in a case that has attracted general attention due to its sensational features and the efforts of the press to exploit and magnify them, rising in open court at the close of such a case and recommending to the court to acquit the defendant, as it is the duty of a prosecutor to do if he believes that a conviction would be unjust. It is done every day in the criminal courts in cases with which the newspapers do not concern themselves, but it would take a brave man to do so in what is known in the parlance of the criminal courts, as "star" cases.

The abuses that have arisen under this head have become well-nigh intolerable. Prosecuting officers, who are ambitious for further honors, maintain elaborate press bureaus for the distribution of news concerning their offices. The reporters who want to stand well with the prosecuting officer, and get all the news that is to be had, fall into the habit of taking the prosecutor's version. Of late years nothing is sacred. A witness is called before the grand jury, and the testimony given there in important cases manages "to leak out" day by day. The secrecy of the grand jury room is a thing of the past. The law against disclosing occurrences there is a dead letter. The prosecuting attorney is generally the chief offender and frequently the only one. The main concern of a modern prosecutor in one of the great cities of this country seems to have become to keep himself before the public, which he does by seeing to it that the public is informed of everything that happens in his office from his own point of view. I do not mean to assert that this shocking condition is universal, but it is not uncommon and is growing more frequent.

Three poor, helpless, old women are about to be tried in one of our sister states on a charge of murder. The issue for the jury is whether the deceased was murdered or committed suicide. From the day that case came into the office of the prosecutor, and for weeks thereafter, so long as public interest could be aroused or sustained, whilst these poor women were under lock and key, the prosecutor was day by day issuing or inspiring statements in the press in the community in which they are to be tried, tending to show or arguing that they were guilty, and presenting such proofs and innuen-

does as he had at hand to support these *ex parte* arguments. All this was on the eve of the assembling of a grand jury to consider the case.

The grand jury, of course, promptly indicted these poor women and now they will have to be tried in a community in which public sentiment has been crystallized against them through the energies of the press, ably seconded by the prosecutor. These women are not being tried. They are being hounded. It is little better than mob law, and in some respects not quite so fair, for it is masquerading under the forms of law.

The following are suggested as remedies for this condition:

1. The enactment of laws, similar to those prevailing in England, prohibiting a newspaper from publishing anything concerning a case that is in the courts other than a *verbatim* report of the proceedings in open court.

2. Prohibiting any newspaper from commenting, either editorially or otherwise, upon the evidence in judicial proceedings until after final judgment.

3. Prohibiting any prosecuting officer, under penalty of removal and punishment for a misdemeanor, from expressing or suggesting for publication an opinion as to the guilt or innocence of a person accused, or from disclosing any of the proceedings of a grand jury, or from publishing or being privy to the publication of any evidence in his possession bearing on any case under his control. If an assistant or other person in his office is guilty of any of the acts charged it should be ground for the removal of the prosecutor and the punishment of the assistant, or any other person connected with the office, so offending.

When we consider the far-reaching effect of these press campaigns against persons under criminal charges, such regulations should be regarded as very mild compared with the evils that are sought to be remedied. The expense to which the state is put in securing impartial jurors is alone more than sufficient to justify these reasonable precautions.

The next evil, but to my mind not the greatest by far, but the one that has received most attention from the public and those in authority, relates to the law's delays.

Some of the remedies that have been suggested seem to me far worse than the disease. Chief among them, and the one that

appears most generally to be favored, is that of restricting the right of appeal in criminal cases. At a time when other nations are granting and enlarging this right we are considering abridging it.

There should be the most generous right of appeal in criminal cases—far more liberal than when we are dealing with mere questions of money. And yet the supporters of this change would be shocked at the suggestion that there be no appeals allowed in civil cases. How much greater the need where the liberty and reputation, not only of the man, but of all those about him, are involved?

Nor is there force in the plausible, but unsound, suggestion that no judgment in a criminal case shall be reversed except for errors that can be affirmatively shown to have materially prejudiced the defendant on the merits of the charge, and that all so-called "technical" errors are to be disregarded.

If a mistake of law committed during the trial is not too technical and trifling to be overlooked and is such that it is regarded by the law as error, it must be because the rule that has been violated in the commission of it is considered in the light of human experience as essential, or at least material to the protection of the rights of one of the parties. If such a rule has been violated the defendant has not been fairly tried and there should be no latitude about allowing such a judgment to stand.

One of the worst abuses of the present system is not the delay in executing the judgment, but the undue and indecent haste in requiring a defendant to undergo the sentence whilst his appeal is pending. We have constant object lessons in the brutality of the law in that respect in the cases of those who have undergone all or most of their terms of punishment, to find that the judgment under which they were disgraced and imprisoned was without lawful authority.

It sometimes happens, as in a comparatively recent case in New York, involving an official of a life insurance company that the appellate court decides as matter of law that no offense whatever was committed after the man has served nearly the entire term for which he was sentenced. The cases of this kind are not infrequent. Is not that paying too great a penalty for certainty of punishment?

Both these evils—that of delay and unjust punishment—can and should be prevented by

1. Allowing a stay of sentence as a matter of right and not of discretion, until the defendant has exhausted every remedy by appeal that the law permits.

2. Providing that unless the appeal is moved by the appellant for hearing within a given number of days after judgment has been pronounced the stay of sentence is automatically vacated.

3. The printing of the papers or record on the appeal should be under the control of the court through its clerk. It will then rest entirely with the court to regulate the time when the appeal is to be argued. The parties will no longer control that subject as they do now in many of our states. This change will do away with a most prolific cause of the existing delays. There is no reason why there should be a delay of more than from two to four months between the sentence and the determination of the appeal.

4. Where the defendant makes proof satisfactory to the court that he is unable to pay the expenses of the appeal the state should pay them. The right and opportunity of the fullest defense should not depend on the ability of a man to pay. It is not in the interest of the state to convict where there is doubt. It is in its interest to give to every man the fullest opportunity to establish his innocence.

This brings me to the next suggestion I have to offer which is that there should be an office established as part of the machinery of the criminal law, to be known as that of the public defender.

Unjust convictions among the poor and helpless, and especially among our ignorant foreign population, are far more frequent than we fortunates care to admit. This is especially true in the great cities where the courts are crowded with business, the pressure is great and justice is necessarily hurriedly administered in obscure cases.

The most prolific abuses occur in what are known as "assigned" causes, in which the defendants and their families and friends are too poor to furnish bail or employ counsel. In those cases the court assigns counsel, who serve without pay, except that in some states a moderate fee is allowed in capital cases only. The counsel assigned in these cases are with rare exceptions almost necessarily young and inexperienced men or lawyers without standing or ability.

Yet these are the cases above all others in which the defendants are already at the greatest disadvantage, being incarcerated, unable to go about to look up witnesses and too poor to employ any one

to do so for them. If they are first offenders of previous good reputation, as they generally are, for experience has shown that professional criminals are generally able to secure counsel, their prison experience has taken the courage out of them by the time they are placed on trial.

They come to the bar of justice crushed in spirit, and if innocent, in mortal terror of the law and resigned to any fate. Their assigned counsel, whose retained clients are his chief concern, easily convinces himself that he has done his duty to his pauper client if the prosecutor will accept a plea of guilty to a lesser form of crime or be content to recommend a moderate sentence. So before the poor fellow knows what has happened to him he has consented on less notice and in less time than it requires to tell the story, to take the advice hurriedly given him as he stands quivering at the bar and he finds himself on the way to prison. There is hardly a day in the year when this scene is not enacted in the courts of our great cities. That such a system results in innocent men being branded and punished as criminals admits of no doubt. That the number of such crimes against justice and humanity is very much underestimated is beyond question to any one who has observed the system in operation. The judges do what they can to minimize the evil, but from the nature of the case they must rely on counsel.

What, then, is the remedy?

The state has its public prosecutor. Why not its public defender to care for those who are unable to defend themselves? It is quite as much to the interest of the state to rescue the innocent as to punish the guilty. There is no danger of the privilege being abused. Every man who can afford to defend himself will exhaust every resource to select a champion of his own choice. The most helpless and unfortunate of all our citizens should not be forced to go virtually undefended.

Nowhere in our social fabric is the discrimination between the rich and poor so emphasized to the average citizen as at the bar of justice. Nowhere should it be less. In an ideal state of government the lines would be made to disappear here of all places. Money secures the ablest and most adroit counsel, whose characters and reputations are powerful factors in their client's cause. Evidence can be gathered from every source, and all the legitimate expedients of the law availed of. The poor must be content to forego all these

advantages, but surely the state should not take an unfair advantage of their helplessness.

With experienced counsel, and the entire organized machinery of the criminal law at its command, it should not seek to disarm him completely, thus accentuating the power of money in the struggle for liberty between the state and its citizens.

It is with sincere regret and reluctance that I assert that save in rare instances the modern prosecutor does not stand between the people and the accused. He and his assistants too often measure the success of their labors by the number of convictions they have secured. It is a false and brutal conception of duty that is responsible for grave injustice, but it is none the less true that it exists. Under its influence the prosecutor becomes a partisan advocate, blind to the strength of the defense, unwilling voluntarily to expose the weakness of the people's case.

The people are as deeply interested in proving the innocence of the accused where he is unable to defend himself as to prove his guilt. By all means let us have a public defender in the interest of fair play and common humanity.

Many more instances of evils that may be reformed could be cited if time permitted. I have not attempted to deal with the minor abuses that weigh so heavily upon the poor who come into contact with our magistrates' courts, nor with the ever-perplexing question of the relative merits of an elective or appointive judiciary, nor with a host of other problems that present themselves.

That there are such problems pressing for solution cannot be denied. In every other branch of human endeavor we are forging ahead. Why should we stand still, clinging to tradition in the field of usefulness most important of all in a progressive civilization?